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Legal Dept.

B. BRANCH

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Subject:— Notifications under Bombay

Police Act- 1951

File No. Police II 152. (N)

Gen. 194 .

38- B

LEGAL DEPARTMENT.

In place of H.D. drafts two revised draft notifications are sent herewith.

Section 42 of the said Act contemplates the extension of that section to towns and villages. So instead of mentioning the area of five miles, it would be consistent with the wording of the said section 42 to extend the Act to villages situated within a distance of five miles or so around the limits of the Baroda City. The names of such villages or towns if any may be specifically mentioned in the notification.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R. to H.D.No.2001, dated the 8th February 1952.

RHB.
4.7.

Legal Department.

Under clause (a) of sub-section (2) of section 25 of the Act the Commissioner shall have authority to punish any member of the subordinate ranks under sub-section (1). No power similar to the power of a District Magistrate has been given to the Commissioner to suspend an Inspector subordinate to him pending the inquiry into the grave complaint against an Inspector. That means such power of suspending an Inspector vests in the State Government. By clause (b) of section 5 it is provided that recruitment, pay, allowances and all other conditions of service of the police force shall be such as may from time to time be determined by the State Government by general or special order. It is also provided in sub-clause (c) of section 7 of the Act that the Commissioner shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority as are provided by or under this Act or as may otherwise be directed by the State Government by a general or special order. Reading these two sections together it appears that the power to suspend an Inspector can be delegated to the Commissioner pending inquiry into a grave complaint against an Inspector subordinate to the Commissioner.

Sd/-

Additional Secretary to Government.

U.R.to H.D.,No.3089, dated the 26th February 1952.

RHB.
4.7.

Legal Department.

Revised draft orders under section 144 of the Criminal Procedure Code, 1898, and the Bombay Police Act, 1951, are sent herewith.

For the reasons stated in Additional Secretary's opinion No.3326, dated 29th February 1952, it would not be possible to prohibit persons from canvassing for votes, etc. The power conferred by section 144 upon a Magistrate is an extraordinary power and before it is exercised, a reasonable connection will have to be established between the act prohibited and the apprehended danger which it is feared will lead to a disturbance of public tranquillity, etc., referred to in section 144. The likelihood of such disturbance, etc., owing to the act prohibited must be a reasonable and proximate one and the connection between them must not be speculative or distant (Satyanarayanam A.I.R.(1939) Madras 236). The Municipal Acts or the Local Boards Act has not made illegal canvassing for votes, etc., and prohi iting such canvassing by an order under section 144 of the Criminal Procedure Code is likely to be challenged on the ground that no reasonable connection has been established between the act prohibited and the apprehended danger.

Order at p.9(a) ante In this order no area in which the order is to be operative is mentioned. The provision of sub-section (1) of section 37 of the Bombay Police Act, 1951, empowers the Commissioner and the District Magistrate to prohibit the carrying of arms, cudgels, etc., at any town, village or place, or in the vicinity of any such town, village or place. It has been held in Dundappa Mallappa v. Secretary of State (18 B.L.R.460) that under section 42 of the Bombay District Police Act, 1890, which corresponds to section 37 of the Bombay Police Act, 19 51, the powers of prohibiting conferred upon the Magistrate are by the statute expressly limited both in time and in place, the limitation of place being a particular town or village or the vicinity thereof. It is, therefore, necessary to specify in the proposed

proposed order the name of the town or village or place where the order is to be made operative.

(b) In this order the power is reserved to the Commissioner of Police or the District Magistrate or any officer authorised by him to exempt a person from the provisions of the order. This order would ex facie be bad as it would be discriminatory in nature. The intention appears to be that persons who are infirm should be permitted to carry sticks or lathis for the purpose of supporting them. If so, it is necessary to provide in the order that the order shall not apply to persons who, on account of infirmity, are permitted by the Commissioner of Police or the District Magistrate or an officer authorised by him to carry a stick or lathi. The order has accordingly been revised.

The other three orders at pp.11-15 ante are revised consistently with the provisions of the relevant sections of the Act.

Sd/-

for Additional Secretary to Government.

U.R. to H.D.No.3371, dated the 29th February 1952.

RHB.
4.7.

Office of the R.L.A.

The view taken by H.D. in paragraphs 2 and 3 is correct.

2. For the reasons given in the R.L.A's opinion No. 4831 dated the 29th March 1952, the provisions of sub-section (6) of section 33 of the Bombay Police Act, 1951, would not apply to an order to be made under that section. Ordinary publication normally made with regard to such orders would suffice.

3. Even though the provisions of section 163 do not apply to an order to be made under section 33, the manner of publication specified therein may be followed in this case taking into consideration the provisions of sub-section (8) of section 33.

Id/- P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No.339-Secret., dated the 9th April 1952.

RHB.
4.7.

LEGAL DEPARTMENT.

Orders under section 36 of the Bombay Police Act, 1951, have to be made from time to time as occasions may arise. The orders which the Commissioner of Police makes under clause (d) of section 36 will have therefore to be for a temporary fixed period.

Id/- J. R. DHURANDHAR,
Additional Secretary to Government.

U. R. to H. D. No. 7072, dated the 6th May 1952.

RHB.
4.7.

Legal Department.

The question raised in these papers relates to the conferment of power on the Inspector-General of Police and the Commissioner of Police, Greater Bombay, to suspend Inspectors of Police. When a Bill to consolidate the City of Bombay Police Act, 1902, and the Bombay District Police Act, 1890, was drafted, sub-clause (16) of clause 2 defined "subordinate ranks" as meaning the members of the Police Force of and below the rank of the Inspector. If this clause had remained unaltered in the Act as it was passed by the Legislature, Inspectors would have been included in the expression "subordinate ranks" and the provisions of section 25 of the Act relating to the punishment of subordinate ranks would have applied to Inspectors. But in the Select Committee an alteration was made in clause 2(16) of the Bill and it was provided that "subordinate ranks" should mean Police Officers below the rank of Inspectors. The recommendation of the Select Committee was accepted by the Legislature and section 2(16) of the Act as it stands does not include Inspectors. The result is that section 25 of the Act does not apply. The I.G.P. states that this step taken by the Legislature in divesting the Inspector-General of Police and the Commissioner of Police of the power of punishing the members of the Police is not correct. The question was discussed in the Select Committee, and the the Select Committe recommended that Inspectors should not be included in subordinate ranks. This recommendation of the Select Committee was accepted by the Legislature and Government, and it is not proper and also it is too late, to raise any argument, about the correctness or otherwise of the alteration made. The exclusion of Inspectors from subordinate ranks means, as has been correctly pointed out by the I.G.P., that the recruitment and conditions of service in the case of Inspectors will have now to be regulated by the Bombay Civil Services Conduct Discipline and Appeal Rules, as it is in the case.

of higher Police Officers. It is true that in R.L.A.'s opinion No.3089, dated 26th February 1952, it was stated that the power of suspending Inspectors can be delegated to the Commissioner of Police undert he provisions of the Bombay Police Act, 1950. But the I.G.P. points out that the power of appointing Inspectors has been delegated by rules made under section 241 of the Government of India Act, 1935, to the Commissioner of Police in Greater Bombay and to the I.G.P. elsewhere. The order delegating this power is in force under Article 309 of the Constitution (see Bombay Police Manual para. 33). In view of this fact, the view taken in R.L.A.'s opinion No.3089 dated 26th February 1952 requires modification. Under section 16 of the General Clauses Act, 1897, which applies to the interpretation of the Constitution the power of appointment would include the power of suspension. It will, therefore, be open to the I.G.P. and the Commissioner of Police to suspend an Inspector under rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. It is true that the said rule does not apply to the members of the Subordinate Police Service. But in view of the change made by the Legislature in the Bombay Police Act, 1950, itself, the expression "Subordinate Police" Service" in rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules will have to be given the same meaning as it has in the Bombay Police Act. As the matters stand, no specific delegation under the Bombay Police Act is, therefore, necessary for the suspension of Inspectors. But in view of the change made by the Legislature in the Bombay Police Act, 1950, it will be for H.D. to consider whether any modification is necessary in regard to orders which at present apply to Inspectors.

Id/- J.R.DHURANDHAR.

Additional Secretary to Government.

U.R. to H.D. No.8102, dated the 15th May 1952.

RHB. 4.7

Legal Department.

For the purpose in view, it will be expedient and necessary to undertake legislation and amend the Bombay Police Act suitably.

2. Even if it is decided to haves pecific provisions for recruitment of the wireless personnel, it would be more appropriate to make the necessary provisions in the Bombay Police Act itself rather than in the Bombay State Reserve Police Act, 1951 (Bom.XXXVIII of 1951).

Sd/-

Additional Deputy Secretary to Government.

U.R. to H.D.,No. 14354, dated the 4th September 1952.

RHB.
4.7.

Legal Department.

It appears from page 94 of H.D. file 7817/3-II(c) that after the coming into force of the Government of India Act, 1935, the posts of Police Inspectors were excluded from the Provincial Service and were brought within the definition of "subordinate rank" (please see section 3(m) of the City of Bombay Police Act, 1902). It also appears that before the coming into force of the Government of India Act, Inspectors of Police belonged to the Provincial Service; but that after the coming into force of the said Act, Inspectors were classed as belonging to Subordinate Police Service. It is stated at page 94 of the said H.D. file that "the exclusion of Police Inspectors from the Provincial Service will not affect their position as Gazetted Officers. They will continue to be gazetted officers and enjoy all the privileges of gazetted ranks except that in the matter of appeals the Inspector General of Police and the Commissioner of Police are the final appellate authorities.". The Select Committee amended the definition of "subordinate rank" to mean members of the Police Force below the rank of Inspector. That expression has been used in section 25(1), 25(2) and 25(2)(b) of the Bombay Police Act and will have the meaning given to it in the definition Any rule made under the City of Bombay Police Act, 1902, and the Bombay District Police Act, 1890, in respect of punishment of Inspectors would no longer survive being inconsistent with section 25 of the Act. It, therefore, impliedly follows, from what is stated above, that the intention of the Legislature is that the Inspector General of Police or the Commissioner of Police should not have the power of appointing Inspectors. It will be necessary for Government to give effect to the intention of the legislature and all orders relating to the appointment and conditions of service of Inspectors made prior to the coming into force of the present Act will ha[ve] have to....

be revised. Even though, therefore, powers under such orders as G.N.H.D.No.7817/3-II(c) dated the 17th November 1938, continue such orders will have to be modified in so far as they authorise the Commissioner of Police to appoint Inspectors in Greater Bombay. Similarly the relevant order authorising the Inspector General of Police to appoint Inspectors will have to be cancelled. After such modification of relevant orders regarding appointment of Inspectors, Government would get automatic power to appoint Inspectors. Whether Inspectors should be classed as belonging to State Service or to the Subordinate Police service is a matter for the administrative department to consider, but in any case, to be consistent with the provisions of section 25 of the Bombay Police Act, 1951, rules 33 and 34 of the Bombay Civil Services, Conduct, Discipline and Appeal Rules will have to be amended by substituting the words "not being Inspectors of Police or members of the subordinate ranks as defined in clause (16) of section 2 of the Bombay Police Act, 1951" for the words "(other than the subordinate Police service)" occurring in rules 33 and 34. In view of what is stated above, the replies to the points raised by the Dy. Secretary, H.D. are as follows:-

2. Para. 3 of D.S., H.D.'s note at p.36.- The Select Committee intended that the Inspectors of Police should cease to be members of subordinate ranks and that they should be appointed by Government. Whether they should belong to subordinate Police service is for H.D. to decide having regard to the fact that the appointments would be made by Government and punishment will be inflicted by Government. Other conditions of service of Inspectors can be made under section 5(b) of the Bombay Police Act.

3. Paras. 4 and 5 of D.S., H.D.'s note p.37.- The power to appoint Inspectors is implies in the Act. It is not necessary also to amend section 14(1) of the Act. The mere issue of a certificate does not carry with it any power of appointment.

4. Para. 6 of D.S., H.D.'s note at p.38.- The Select Committee intended that the Police Inspectors should be appointed by Government and should be punished also by Government. In view of what is stated above, the reference to the power of the District Superintendent of Police or the Principal of the Central Police Training School, Nasik, to suspend an Inspector who is subordinate to him will have to be deleted by amending the Act to be consistent with the intention of the Select Committee.

5. Para 7 of D.S., H.D.'s note at p.39.- No remarks to offer.

6. Para 8 of D.S., H.D.'s note at page 39.- The question discussed therein is for the Home Department to consider. Such matters can be regulated under orders made under section 5(b).

7. Para 9 of D.S., H.D.'s note at p.40.- The appointment and punishment of Inspectors have to remain with the State Government.

8. Para 10 of D.S., H.D's note at p.40.- It will not be consistent with the Select Committee's intention to retain the power of suspending Inspectors with the Inspector General of Police or the Commissioner of Police. The other questions are for the Home Department to decide.

9. Para 11 of D.S., H.D.'s note at p.41.- The amendments suggested in that para are not necessary for the reasons already given. Section 25(2)(a) however, will have to be amended by deleting the reference to the power of a District Superintendent of Police and

the Principal of the Central Police Training School, Nasik, to suspend an Inspector subordinate to him.

10. If Secretary H.D. desires to discuss any of the above points, I shall be glad to discuss them with him.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R. to H.D.No.15068/B, dated the 15th September 1952.

RHB.
4.7.

Legal Department.

A revised draft order is sent herewith subject to the following observations:-

The provision contained in clause (c) of Home Department draft has been brought out under clause (2) of the revised draft.

The provision contained in clause (d) of the H.D. draft has been brought out under clause (3) of the revised draft.

Clause (e) and (f) of H.D. draft.- Whatever may be the position under the repealed City of Bombay Police Act, 1902, as regards the power of the Deputy Commissioner or the Assistant Commissioner of Police to punish an office below the rank of Inspector, under section 25(2)(a) of the Bombay Police Act, only the Commissioner of Police has been empowered to punish any member of the subordinate ranks as defined in that act and no such power can now be delegated to the Deputy Commissioner of Police or the Assistant Commissioner of Police. The provision contained in clause (e) of the H.D. draft will, also, be inconsistent with clause (b) of sub-section (3) of section 25 of the Act and has therefore been deleted. The provision contained in clause ~~(e)~~ (f) is dependent upon the provision contained in clause (e) and would no longer survive on the deletion of clause (e).

The view taken in para. 4 of H.D. note is correct. As stated in R.L.A's opinion No. 848-Confl. dated the 27th November 1950, "although no revisional power would be available to Government in the absence of any rule or a general order under section 29(3) of the Bombay District Police Act, still Government has power under section 29(1) of inflicting punishment on any member of the subordinate ranks. That power can be availed of if Government considers that the punishment imposed by the District Superintendent of Police is inadequate." The provisions similar to the provisions contained in section 29(3) and 29(1) of the Bombay District Police Act have now been embodied in section 25(1) and 25(2)(c) of the new Act and the

rules regarding the exercise of revisional power can be made thereunder. Opportunity, may, therefore be taken to frame such order under section 25(2)(c) of the Act. Clause (4) of the order has accordingly been added and as advised by the R.L.A. in his opinion No.848-Confl. dated the 27th November 1950, it is provided in clauses (2) and (4) of the order, ~~xxxx~~ that before enhancing the sentence which Government or the Inspector General of Police thinks to be inadequate, Government or the Inspector General of Police shall give a fresh notice to the member of the subordinate rank to show cause why higher punishment should not be inflicted on him.

Sd/-

Additional Secretary to Government.

U.R. to H.D.No.1022/B-Confl., dated the 7th October 1952.

RHB.
&.7.

SVA 21/7

21/7